Supreme Court, U.S.
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NO.

IN THE

Supreme Court of the United States

October Term, 1996

TIN YAT CHIN,

Petitioner

v.

DEPARTMENT OF JUSTICE,

Respondent.

Petition Writ of Certiorari to
the United States court of Appeals
for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

Tin Yat Chin, pro se
56-54 148th Street
Flushing,NY 11355
(718)461-6648

HIPP

QUESTIONS PRESENTED

1. Whether the act of the court below has become evasion by ignoring an important question raised by petitioner which is beyond academic and episodic which can support his removal is being too harsh and unreasonable.

2. Whether it is denial of equal protection by the M.S.P.B. in applying punishment to one class of government employees to be lenient but permit the extreme harsh to another class of employees.

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OPINION BELOW

The opinion of the Court of Appeals for the Federal Circuit is enclosed as appendices A. It is not citable.

JURISDICTION

Petitioner's removal as immigration inspector was affirmed by the United States Court of Appeals for the Federal Curcuit on August 13,1996

The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

> No person shall ... be deprived of life, liberty, or property, without due process of law...

STATUTE INVOLVED

5 U.S.C. 2302(b)(1)(A), Prohibited personnel Action:

> (b) Any employee who has authority to take, recommend, or approve any personnel action, shall not, with

respect to such authority--

(1) discriminate for or against any employee..--

(A) on the basis of race, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964(42 U.S.C. 2000e-16);

ADMINISTRATIVE MANUAL INVOLVED

Department of Justice 1752.1A, appendix 1, Standard Schedule of Discipline Offenses and Penalties for Employees of the U.S. Department of Justice, Instruction 5, nature of offense 21 and 25 and its punishment for first offense:

INSTRUCTION 5: Where appropriate, consideration may be given to reduction in grade in lieu of removal.

Nature of offense #21: Criminal, dishonest, infamous, or notoriously disgraceful conduct.

First offense: Official reprimand to removal.

Nature of Offense #25: Receiving or soliciting gifts, favors, or bribes in connection with official duties.

First offense: Official reprimand
to removal.

STATEMENT OF THE CASE

Petitioner, Tin Yat Chin, myself, was a Chinese immigrant during his childhood to America from Hong Kong. Since then, I was raised in New York City, and received my education in the Big Apple. Throughout my childhood and teen-age years, there was not one police officer in New York City who was of Chinese ethnic background and there had been many hot conflicts raised between the Chinese community and the New York City Police Department. Many conflicts had been resulted with marches from the Chinese community to the Police Headquarters during the mid-seventies.

Having observing all these conflicts during my grown-up stage, I committed myself in hoping that I could contribute some kind of efforts that could help to resolve conflict between the Chinese community and the Police Department, which were mostly due to cultural misunderstanding. For such, I had joined a volunteer program, the Auxiliary Police program of the New York City Police Department.

The principal idea of the auxiliary police program at then was to recruit volunteers from the community in which the precinct was stationed. These volunteer

auxiliary police were to serve as the bridge between the community and the police department. They were there to provide better cultural understanding and to avoid and resolve possible conflicts between the community and the Police Department.

Petitioner, as a member of this volunteer program, had helped in resolving and avoiding a few possible incidents that could have led into unwanted conflicts, and for which petitioner had received recognition from the police department. My purpose for expressing this is to show that I am a community-minded, good hearted devoting person.

As any immigrants who came to America to look for the American dream, myself is no different either. My American dream was hoping to amalgamate into the largest society and break off from the old odd traditions. To achieve such, I looked toward to becoming a member of the law-enforcement community, not to mention that my kind back then was extremely under represented. My selection for such was that I believe I could serve the best of both sides, the community and the law, as I had demonstrated myself as a member of the volunteer auxiliary program.

At my senior year of college in

which I was major in police science, a recruiter from the Immigration & Naturalization Service from the New York City Office recruited me. I then began to work as an immigration inspector, GS-5, immediately after graduation in 1987 at John F. Kennedy International Airport (J.F.K.).

However, at about in the mid-1991, almost a year after the Tienenmen Incident in China on June 01, 1990, J.F.K. International Airport experienced a Chinese illegal alien flush. Everyday almost every flight would depart tremendous amount of Chinese illegal alien flushing into the immigration check point with counterfeit document, altered document, or simply "jump plane" (no document at all). The present of these Chinese illegal aliens into J.F.K. created problems. First, no communication can be exchanged due to language barrier. Second, these Chinese illegal aliens did not trust any government official and therefore none was willing to give cooperation. As a result, they created frustration to other immigration inspectors. In return, other inspectors treated them as a bunch of nuisance, for example. being thrown onto the wall just like a bags of sands. The most celebrated

event was a circular hole on a dry wall the size of a human head which was created by the banging of a Chinese illegal alien's head on to the wall in the finger-printing room of then Pan-Am, now Delta terminal.

Then, I and other inspectors of Chinese ethnic were being called in to alleviate all possible barrier and trust. It was difficult, but we managed to do our best. However, I (we) sustained unwelcome and discriminatory remarks from other inspectors when these Chinese were being served and released. The following unwelcomed remarks were often made.

"They are your people/cousins, you definitely would help them."

"What they come here for, they want to open up more Chinese fast-food?"

"Ask her which massage parlor she is going to. So I can go for a massage, ha, ha."

"He's not cooperating? Show him that hole in that wall. He will cooperate. Ha ha."

Even worst was that when supervisors were informed that some of the Chinese did not want to cooperate unless we accepted their "tea money"[1], supervisors

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1/ The giving of "tea money" to another

wouldn't care less but gave an attitude that as long as "you Chinese could get rid of your Chinese. then we (supervisors) wouldn't careless on what you Chinese do". A few of the remarks made by supervisors are as follow:

"What do you expect from it, a medal ?"

"You ain't going to get a medal for this."

"They are your people, go get rid[2] of them."

"Upstairs (higher supervisory inspectors) is not going to like it."

"Keep your quiet and you will get your eleven.[3]"

1/cont' is a common Chinese practice as a gratuity or thank to someone. This custom practice is still commonly being practiced in Chinese community in New York, and is not an offensive act. However, it may be viewed as offensive when refusing it for not being "giving face"--respect in return.

2/ To get rid means to process any aliens appears to be excludable

ON January 07, 1993, while performing my duty, I was called into the secondary area by Supervisor Eddie and given the following verbal instruction:

"you have a cousin in there, go take care of him."

I then followed his direct order as is. However, this alien insisted that I accepted "tea money" from him. I then immediately reported it to the supervisor, but Supervisor Eddie responded with,

"Ah, you know your people, do whatever you want, just get rid of him".

Then for this time I lost control and

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by relieving them and they be returned for a hearing at a later date. Because there was limited virtually no detention facilities in New York City to hold any illegal aliens.

3/ Eleven means, at then, the newly created competitive position Special Operation Inspector at grade eleven. And remarks as such, does it constitute a ratification and/or mutual agreement that if I do keep my quiet then I will get my eleven, remains itself an open question.

accepted the money, since the supervisor didn't even careless but only interested in "get rid of your people." With deep remorse I pleaded guilty to this offense and accepted my punishment. as set forth by the district court. Upon my plea, I was proposed for removal and removed from my position as immigration inspector.

In retrospect to the whole matter, I reasonably believed that removal wasn't reasonable and was too harsh. From such, I initiated appeal to the Merit System Protection Board, New York Regional Office. According to Administrative Manual DOJ 1752.1A,appendix 1, Standard Schedule of Disciplinary Offenses and Penalties for Employees of the U.S. Department of Justice, it says, "where appropriate, consideration may be given to reduction in grade in lieu of removal," and for the first offense in receiving gifts and criminal misconduct, its punishment is "official reprimand to removal." Therefore, I believed in my case, after consideration of all related factors and causes, removal was just too harsh and unreasonable.

In my appeal, I raised an academic question. That is between causation and occurrence, "character naturally leading to its occurrence. Raynolds v. Tevas &

Pac. Ry. Co. 37 La.Ann. 694 Ct of App Louisiana,1885. I argued that hostile working environment and prohibited personnel practices (5 U.S.C. 2302) by supervisors were the causation that naturally leading to my occurrence, my misconduct. And for such, to use the extreme harsh punishment removal is too harsh and unreasonable without having the agency to take part of the responsibility for their causation.

However, the Board affirmed agency's removal decision by applying a few precedent cases and didn't explore the academic question I raised. But the factors of these precedent cases were different from me which that my case itself totally stand a different episodic.

From here, I petitioned to the Merit System Protection Board for a review. However, it was being denied. Then, I filed for judicial review in the United States Court of Appeal for the Federal Circuit. I again emphasis on the important question of academic and episodic, which its causation and occurrence, and its factors are distinct from those of precedent. Unfortunately, The Court of Appeal affirmed the Board's denial for a review by repeating the opinions of the administrative judge.

However, I must thank the Court

of Appeal for saying "being subjected to ethnic slurs and taunts should, of course, be no part of any federal employee's working environment." But I must disagree with the last sentence for that the Court of Appeal denied to see through that supervisors' ethnic slurs and taunts, appeared to be ratification, which were causations contributing factors that gradually led to my occurrence. Denying this factor is creating an appearance to cover-up on any wrong doing from the agency and to support such wrong doing. This leads to an important question in this matter that is "beyond academic and episodic. From this, I pray for writ of certiorari.

REASON FOR GRANTING THE WRIT

This case raises an important question that is beyond academic and episodic (Rice v. Sioux City Memorial Park Cemetery, Inc.) 349 U.S. 70,74) that has never been resolved by this Court, as by my research. Namely, the question is:

> Whether if a supervisor's ethnic slurs and taunts act of a government agency demonstrated to be the causation of a misconduct act of a fellow

employee, especially when the supervisor's act appears to be ratification to the employee's misconduct; then when come to punishing the employee for his misconduct, is it reasonable to apply the extreme harsh punishment to the employee, while letting the agency free of responsibility as an employer of the supervisor?

I say it is not. It is plainly unfair to punish an employee for his misconduct which was induced by the act of a supervisor without considering the contributory factors on the part of the supervisor.

As in my cases, when after I informed supervisor Eddie that the alien insisted to give me "tea money", his reaction was "you know your people, you do what you want, just get rid of him." The supervisor's language, besides being ethnic slurs and taunts, but also served as a ratification, had created a mutual understanding between him and me. A mutual understanding between employer and employee can, for due process purposes, create a property interest in continued employment even in the absence of a written contract or statutory protection. U.S.C.A. Const Amend. 5, Wehner v. Levi 562 F.2d 1276, Columbia Dist.

1977.

Therefore, taking away a property interest, my employment, without full consideration of this mutual understanding is to avoid a due process issue, and such avoidance has become an evasion. (Id. Rice)

The only reason one can see why the board and the court below wanted to create a evasion is that:

> By looking into the important question I raised, it will lead to expose government agency's wrongful practice.

However if avoiding the important question in detail is just in order not to expose possible agency's wrong doing, then it is a denial of due process. This avoidance has become an evasion. (Id.Rice)

Certiorari will be issued in the interest of uniformity of decision. Lau Ow Bew v. United States 144 U.S. 47,58 1891. In Speilman v. Social Security Administration 1 M.S.P.B. 50 (1979) (ALJ decision), Speilman falsified an application for an administrative law judge position. The Board first observed that the most reasonable sanction would be removal from

the Service. However, with clear evidence of rehabilitation, it was determined that the suspension was substantial enough to indicate the seriousness of the offense.

Here in my case, I had demonstrated to the administrative law judge for M.S.P.B. that I had deep remorse, contrition, and rehabilitation for my act, and the judge had stated so in her opinion. For such the board should consider the Douglas's mitigation factor in consideration of the potential for employee's rehabilitation. Douglas v. Veterans Administration, 5 M.S.P.B. 280,308 (1981).

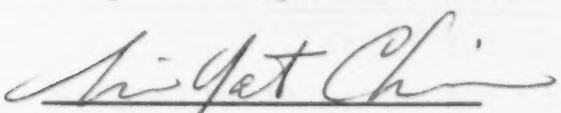
However, the administrative law judge avoided this consideration and Speilman. It make me wonder why an administrative law judge would extend leniency to an administrative law judge who falsified his application, but would apply the extreme harsh removal to me while I also demonstrated clear evidence of rehabilitation.

The only reason I can see why such an avoidance is selected is the denial of equal protection, and not applying the uniformity of decision(Id. Lau). Such avoidance had become an evasion. (Id. Rice)

CONCLUSION

For these reasons the writ of certiorari should be issue to review the judgment and opinion of Court of Appeals for the Federal Circuit.

Respectfully Submitted,



Tin Yat Chin,
Petitioner, pro se.
56-54 148th Street
Flushing, NY 11355
(718)461-648

APPENDIX

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1. Opinion from U.S. Court of Appeals for the Federal Circuit APP-1

2. Opinion from the Merit Systems Protection Board APP-4

3. Initial Decision, Administration Law Judge, Merit Systems Protection Board, New York Field Office APP-7

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It public record. The disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

96-3176

TIN YAT CHIN

Petitioner,

v.

DEPARTMENT OF JUSTICE

Respondent.

DECIDED: August 13, 1996

Before PLAGER, RADER and BRYSON,

Circuit Judges

PER CURUM.

DECISION

Tin Yat Chin petitions for review of the final decision of the Merit Systems Protection Board, Docket No. NY-0752-94-0374-I-2, upholding the decision of the Immigration and Naturalization Service to remove Chin. We affirm.

forth in Douglas v. Veterans Administration, 5 M.S.P.R. 280, 308 (1981). In particular, the administrative judge considered Chin's prior satisfactory performance., his expression of remorse, and his belief that he was harassed by other employees. After weighing those factors, the administrative judge concluded that the penalty, which was within the range of permissible penalties for his criminal conduct, was reasonable under all the circumstances.

We find nothing in the record to suggest that Chin's removal was disproportionately harsh. Chin was convicted of serious criminal conduct going to the integrity of his position as an immigration officer. There is nothing surprising about an agency's decision to remove an employee who has been convicted of using his office

to obtain money by bribery or extortion.

Chin argues that he was subjected to hostile working environment that included ethnic taunts based on his national origin, and that the hostile environment and ethnic antagonism to which he was exposed were "contributing factors that gradually led to (the) occurrence" of his criminal conduct for which he was prosecuted and removed. The administrative judge did not regard those factors as any excuse for the grave criminal acts that led to Chin's removal, and either do we. Being subjected to ethnic slurs and tuants should, of course, be no part of any federal employee's working environment. But exposure to such conduct does not justify the commission of criminal acts of any sort, particularly criminal acts that appear to have relation to the hostile environment in which Chin allegedly worked.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

TIN YAT CHIN, Appellant,	)	DOCKET NUMBER NY-0752-94-0374-I-2
v.	)	
DEPARTMENT OF JUSTICE, Agency.	)	DATE: FEB 8, 1996

Tin Yat Chin, Flushing, NY, pro se.

Brian E. Meyers, Esquire, South Burlintong, Vermont, for the agency.

BEFORE

Ben L. Erdreich, Chairman
Beth S. Slavet, Vice Chair
Antonio C. Amador, Member

ORDER

After full consideration, we DENY the appellant's petition for review of the initial decision issued on September 28, 1995, because it does not meet the criteria for review set forth at 5 C.F.R. 1201.115. This is the Board's final order in this appeal. The initial decision in this appeal is now final. 5 C.F.R. 1201.113(b).

NOTICE TO THE APPELLANT REGARDING FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your

representative, if you have one, or receipt by you personally, whichever receipt occurs first. See U.S.C. 7703(b)(1).

FOR THE BOARD: "S/_____"

Robert E. Taylor
Clerk of the Board

Washington D.C.

UNITED STATES OF AMERICA
MERITS SYSTEMS PROTECTION BOARD
NEW YORK FIELD OFFICE

TIN YAT CHIN, Appellant,	)	DOCKET NUMBER NY-0752-94-0374-I-2
v.	)	
DEPARTMENT OF JUSTICE, Agency.	)	DATE: Sept 28, 1996

Peter J. Blessinger, Esquire, New York, NY, for the appellant

Brian E. Meyers, Esquire, South Burlingtong, Vermont, for the agency.

BEFORE

JoAnn M. Ruggiero
Administrative Judge

INITIAL DECISION

By timely refiled appeal, Mr. Chin challenged the agency's decision to remove him from the position of Immigration Inspector, GS-9, Immigration and Naturalization Service, Kennedy Airport, Queens, New York. See AF, Tab 1[1].

The Board has jurisdiction over the appeal. See 5 U.S.C. 7511(a)(1)(A), 7512(1), 7513(d), and 7701(a) (1994).

At the appellant's request, I held a hearing. See AF, Tab 4. For the reason discussed below, the agency's action is AFFIRMED.

ANALYSIS AND FINDINGS

The burden of proof

In an adverse action, the agency

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[1] On September 1, 1994, I dismissed without prejudice the appellant's initial appeal of the removal action because he was in prison and thus unable to attend the hearing he requested. See Chin v. Justice, MSPB Docket No. NY-0752-94-0374-I-1, slip op. at 2 (Initial Decision, Sept. 1, 1994). The appellant was released from prison on May 17,1995. See AF,Tab 1.

has the burden of proving its charges by a preponderance of the evidence[2]. See Burroughs v. Department of the army, 918 F.2d 170,172 (Fed. CIR. 1990); Diaz v. Department of the Army, 56 M.S.P.R. 415, 417 (1993). The agency must also show that there is a nexus between the sustained charge or charges and the efficient of the service. See 5 U.S.C. 7513(a) (1994). Further, the agency must show that the penalty imposed is within the range of reasonableness. See Douglas v. Veterans Administration, 5 M.S.P.R. 280, 308 (1981).

The action against the appellant

On April 4, 1994, Edward J. McElroy, Deputy Director of the agency's New York District, proposed that the appellant be removed from his position. Mr. McElroy based the proposed action on one page: "criminal conviction". See Initial Appeal File (IAF), Tab 4, Subtab 4d.

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[2] "Preponderance of the evidence" is the degree of relevant evident that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue, See 5 C.F.R. 1201.56(c)(2) (1995).

The specification under the charge reads:

> Sometime before March 4, 1993, a grand Jury for the United States District Court, Eastern District of New York, charged that you did knowingly and willfully attempt to affect and did affect commerce by extortion, by obtaining property from several individuals with their consent, such consent having been induced under color of official right. Criminal Indictment no. CR-93-0244 specified seven individuals, each representing a separate count of the indictment, from whom you did extort property, namely: SING HONG GUO; JUN OI LIU; HAN MING MO; SHU ZHEN TAN; HAI JUN FENG; WO ZOU HUANG; and XIAO WEI ZHENG. Each count was a violation of 18 U.S.C. Section 1951, a felony.
>
> On March 26, 1993, you applied for permission to enter a plea of guilty to count number seven of Criminal Indictment no. CR-93-0244 wherein you had charged with knowingly and

wilfully attempting to affect and did affect commerce by extortion, by obtaining property from Xiao Wei Zheng, such consent having been induced under color of official right. You also consented to have a United States Magistrate hear the application of your guilty plea.

On May 20, 1993, in the present and in the present of your defense counsel, Magistrate Azrack administered the allocation pursuant to F.R.C.R., Rule 11 and made a finding that the plea was knowingly and voluntarily made and not coerced and recommended that the plea of guilty should be accepted. You are currently awaiting sentencing based on this plea. Upon sentencing, you could be imprisoned for this crime.

See IAF, Tab 4, Subtab 4d.

Mr. McElroy noted that it was in the appellant's capacity as an Immigration Inspector that he committed the offense. Mr. McElroy added:

> Because of this, I have no confidence in your ability to honestly carry out the responsibilities of your position. Your misconduc is so egregious and so intrinsically linked to your position, that your removal is warranted.

See id.

By letter dated April 21,1994, the appellant's attorney responded to the notice of proposed removal. Counsel provided William Slattery, the deciding official, with a brief biographical sketch of the appellant. Counsel pointed out that the appellant viewed the work environment at Kennedy Airport as Hostile to officers of Chinese origin. Counsel stated:

> This hostile work environment has caused to be instilled in Tin Yat Chin a poor feeling of self worth, as he understood he was perceived by others. This engendered a perception that many supervisors sent him in to move out Chinese immigrants, regardless of bona fides of their status or claims for political asylum.

> This pressure resulted in Mr. Chin weakening to some of the numerous offers of gratuities as set forth in his subsequent plea of guilty in the District Court.
>
> See IAF, Tab 4, Subtabf 4c.

On May 9, 1994, Mr. Slattery issued his decision. He sustained the charge and determined that the appellant should be removed from his position. See id. at Subtab 4b.

This appeal followed. See id. at Tab 1. During a conference, I inquired as to whether the appellant was asserting the affirmative defense of discrimination based on national origin. The appellant's attorney indicated that the appellant believed that discriminatory acts and remarks of other employees contributed to his misconduct and should be considered a mitigating factor. See id. at Tab 5.

The record indicates that the appellant was convicted of extortion.

The agency submitted a copy of the transcript of the May 20, 1993 district court proceedings. The transcript indicates

that the appellant pled guilty to count 7 of the indictment. See AF, Tab4, Subtab 4g. The agency submitted a copy of the judgment of conviction signed by United States District Judge Eugene Nickerson. The document indicates that the appellant was adjudged guilty of one count of extortion. The document also indicates that Judge Nickerson imposed a twelve month prison sentence; a fine of $3000; a special assessment of $50; and a two year term of supervision following release from prison. See id. at Subtab 4e.

The appellant did not dispute the contents of the transcript or judgment of conviction, and he acknowledged that he served a prison sentence. See the appellant's testimony.

I find that the agency's charge was established by a preponderance of the evidence. Therefore, the charge is SUSTAINED.

Efficiency of the service

An agency may take an adverse action against an employee only for such cause as will promote the efficiency of the service. See 5 U.S.C. 7513(a) (1994).

The appellant caused the agency embarrassment. Accounts of what occurred

appeared in articles in three newspaper: the New York Daily News, Newsday, and The San Francisco Chronicle. See IAF, Tab 8, Subtabs 2,3, and 4. The appellant was identified in each of the articles as was the title of his position. See id.

I find that there is a nexus between the conviction and the efficiency of the service. See generally Gallagher v. United States Postal Service, 6 M.S.P.R. 572, 577 (1981) (newspaper reports of criminal proceedings against Postal Service physician).

Reasonableness of the penalty

In an adverse action, the Board has the authority to mitigate an agency-imposed penalty if the penalty is arbitrary, capricious, excessive in proportion to the proven misconduct, or otherwise unreasonable. See Douglas, 5 M.S.P.B. at 302.

At the time of his removal, the appellant had almost seven years of service with the agency. See IAF, Tab 11. No disciplinary actions were taken against him prior to his removal.

It is undisputed that the appellant obtained a bachelor's degree from John

Jay College and served as an auxiliary police officer with the New York Police Department's fifth precinct in Manhattan. See Iaf, Tab 4, tab 4c.

The appellant testified that he felt badly when other immigration inspectors referred to Chinese immigrants as his cousins. He testified that the attitude was: They are your people; you take care of them. He testified that he believed some Chinese people spent $30,000 to come to the United States and that they would not hestitate to offer "tea money" to an immigration inspector of Chinese origin. He testified that, in the past, he informed supervisors that money was offered to inspectors, but the supervisors did not care and took no action . See the appellant's testimony. I note that the appellant's testimony was consistent with a prior statement that he submitted. See IAF, Tab 11.

Mr. Slattery testified that he considered the appellant's claims regarding what transpired at the airport, but he did not believe that the situation justified the appellant's misconduct. See Mr. Slattery's testimony.

I note that the appellant expressed

remorse for the action that led to his conviction. I also note that he promised to be honest if he were returned to duty. See the appellant's testimony.

As a law enforcement officer, the appellant held a position of trust. See Futrell v. Department of Justice, 57 M.S.P.R. 640, 646 (1993). Law enforcement officers are held to a high standard of conduct. See id. The act that led to the appellant's conviction resulted in his financial gain. He displayed very very poor judgment; the act constituted an extremely serious breach of the employer-employee relationship. Under the agency's table of penalties, removal is within range of allowable penalties for criminal conduct. See IAF, Tab 8, Subtab 1.

It is undisputed that the appellant was verbally harassed by other employees. It is also undisputed that he advised supervisors about offers of "tea money". However, I cannot conclude that these situations constituted an excuse for the act that led to his conviction. Incidentally, I note that he acknowledged that he did not file any discrimination complaints. I also note that he acknowledged that he did not file any complaints with the

Inspector General's office.

Having carefully considered the record as a whole, I find that the penalty of removal is within the limits of reasonableness.

DECISION

The agency's action is AFFIRMED.

FOR THE BOARD: /s/_____
JoAnn M. Ruggiero
Administrative Judge

NOTICE TO PARTIES CONCERNING SETTLEMENT

The day that this initial decision becomes final, which is indicated below, is the last day that the administrative judge may vacate the initial decision in order to accept a settlement agreement into the record.

NOTICE TO APPELLANT

This initial decision will become final on November 2, 1995 unless a petition for review is filled by that date or unless the Board reopens the case on its own motion. This is an important date because it is the last day on which you can file a petition for review with the Board.

The date on which the initial decision becomes final also controls when you file a petition for review with the Court of Appeals for the Federal Circuit. The paragraph that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition for review must state your objections to the initial decision, supported by references to applicable laws, regulations, and the record. You must file your petition with:

The Clerk of the Board
U.S. Merit Systems Protection Board
1120 Vermont Avenue, NW, Suite 805
Washington, DC 20419

If you file a petition for review, the Board will obtain the record in your case from the administrative judge, and you should not submit to the Board any item that is already part of the record. Your petition must be postmarked or hand delivered no later than the day this initial

decision becomes final. If you fail to provide a statment--with your initial decision--indicating that you have sent a copy of your petition to the agency, your petition will be rejected and returned to you.

JUDICIAL REVIEW

If you are dissatified with the Board's final decision, you may file a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

you may not file your petition with the Court of Appeals before this decision becomes final. To be timely, your petition must be received by the Court of Appeals no later than thirty (30) calendar days after the date this initial decision becomes final.

NOTICE TO AGENCY/INTERVENOR

The agency or internenor may file a petition for review of this initial decision in accordance with the Board's regulations.